



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Document No. AMS-FV-11-0021]

Mango Promotion, Research, and Information Order; Assessment Increase

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule.

SUMMARY: This rule amends the Mango Promotion, Research, and Information Order (Order) to increase the assessment rate on first handlers and importers of mangos from one half cent per pound to three quarters of a cent per pound. The increase is permitted under the Order, which is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act). The National Mango Board (Board), which administers the Order, recommended this action to ensure that the Board's research and promotion programs continue to be adequately funded.

EFFECTIVE DATE: September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Veronica Douglass, Marketing Specialist, Research and Promotion Division, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, Room 1406-S, 1400 Independence Avenue, SW, Washington, DC 20250-0244; telephone: 888-720-9917; fax: 202-205-2800; or e-mail: veronica.douglass@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Mango Promotion, Research, and Consumer Information Order (Order) [7 CFR part 1206]. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411-7425].

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect.

Section 524 of the Act provides that the Act shall not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under the Act, a person subject to an order may file a petition with the U.S. Department of Agriculture (Department) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling.

Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action, so that small businesses will not be disproportionately burdened.

The Small Business Administration defines small agricultural producers as those having annual receipts of no more than \$750,000, and small agricultural service firms as those having annual receipts of no more than \$7 million (13 CFR part 121). First handlers and importers would be considered agricultural service firms, and the majority of mango producers, first handlers and importers would be considered small businesses. Although this criterion does not factor in additional monies that may be received by producers, first handlers and importers of mangos, it is an inclusive standard for identifying small entities.

First handlers and importers who market or import less than 500,000 pounds of mangos annually are exempt from the assessment. Mangos that are exported out of the United States are also exempt from assessment. In addition, domestic and foreign producers are not subject to assessment under the Order, but such individuals are eligible to serve on the Board along with importers and first handlers. Currently, fewer than five first handlers and 193 importers are subject to assessment under the Order.

Under the current Order, first handlers and importers of 500,000 pounds or more of mangos per year each pay a mandatory assessment of one half cent per pound of mangos handled or imported. The amendment to the Order would increase the rate of assessment currently paid by first handlers and importers of mangos to three quarters of a cent per pound. Exempt handlers and importers would remain exempt from assessment. While this amendment will have an

economic impact on handlers and importers of more than 500,000 pounds of mangos per year, the impact is expected to be offset by the benefits to the mango industry. Assessment revenue is used by the Board to finance promotion, research, and information programs designed to increase consumer demand for mangos. Assessments at the current rate of one half cent per pound generate about \$3.4 million in annual revenue. The Order is administered by the Board under the Department's supervision.

According to the Board, additional revenue is needed to avoid reductions in the promotions budget and to increase investment in marketing and research programs. At its September 2009 meeting, the Board voted to propose a 50 percent increase in the mango assessment rate upon completion of the March 2010 referendum to determine whether mango handlers and importers favored continuation of the Order. The increase in the assessment rate is consistent with section 1206.42(b) of the Order, which permits modification of the assessment rate by the Board with the approval of the Secretary, after the first referendum is conducted.

Mango assessment collections began on January 3, 2005, however, Board activities did not begin until 2006. Consequently, the Board was able to grow a considerable reserve that was used to supplement annual assessment revenues from 2007 until 2009. In 2010, higher than expected assessment revenue made it possible for the Board to operate without exceeding the total assessments collected for that year and to begin 2011 with approximately \$1.6 million in available resources. However, with 2011 spending projected at approximately \$4.3 million and assessment income projected at approximately \$3.2 million, the Board is expected to begin 2012 with a reserve of \$505,244. With no extra funds available from reserves, and if the assessment rate is kept at the current level, the Board's budget would have to be decreased.

In 2010, an econometric study of the effects of the Board's promotion activities on U.S. mango demand was conducted by Dr. Ronald Ward of the University of Florida (2010 economic study). The study indicates that from 2005 through 2009, the value of mango imports to the U.S. grew from \$169 million to \$217 million. This is significant as the vast majority of mangos consumed in the U.S. are imported. The growth in value is the result of both higher prices and greater volumes imported. The study also found that the Board's activities have had a positive economic impact on the demand for mangos, both in attracting more buyers and in increasing the number of mangos purchased per buyer. According to the study, increased spending by the Board would correspond to increases in market penetration and the number of households purchasing mangos. Likewise, decreased spending would correspond to declines in both of those areas. Based on the analysis of these two factors and the value of mango imports, the study concludes that every \$1 invested in the Board adds an additional \$7 to mango freight on board revenues. This study is available from the Board and on the Agricultural Marketing Service website (www.ams.usda.gov/fvpromotion).

An increase of one quarter of a cent per pound in the mango assessment rate is expected to add an additional \$1.6 million per year to the Board's assessment revenue. With the additional revenue collected, the Board intends to invest primarily in marketing and research programs. In addition, the Board would be able to establish a contingency fund to ensure consistent funding in the face of market instability.

The Board considered three alternatives prior to recommending that the assessment rate be increased. First, the Board considered reducing investment in its research program. However, postponing research projects, such as the human nutrition studies that may help the Board to develop health messages that increase demand for mangos, could hinder expansion of

the U.S. mango market. Second, the Board considered limiting investment in programs designed to improve the quality of mangos available at the retail level. Delivering higher quality mangos to U.S. consumers is one of the Board's top priorities because higher quality often translates to higher demand. Third, the Board considered reducing funding for its marketing programs. Lowering the funding level for marketing programs would significantly reduce the Board's ability to conduct promotion and consumer marketing activities, thereby hindering its efforts to increase demand for mangos.

This rule does not impose additional recordkeeping requirements on first handlers, importers, or producers of mangos. First handlers or importers of less than 500,000 pounds of mangos per year are exempt.

There are no Federal rules that duplicate, overlap, or conflict with this rule. Additionally, section 517(c) of the Act states that not more than one assessment may be levied on a first handler or importer.

In accordance with OMB regulation [5 CFR part 1320] that implements information collection requirements imposed by the Paperwork Reduction Act of 1995 [44 U.S.C. 3501-3520], there are no new requirements contained in this rule. The information collection requirements imposed by the Order have been previously approved under OMB control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements.

Background

Under the Order, the Board administers a nationally coordinated program of research and promotion designed to strengthen the position of mangos in the marketplace and to establish, maintain, and expand U.S. markets for mangos. The program is financed by assessments on first

handlers and importers of 500,000 pounds or more of mangos per year. The Order specifies that first handlers are responsible for submitting assessments to the Board on a monthly basis and maintaining records necessary to verify their reporting. Assessments paid by importers are collected and remitted to the Board by the U.S. Customs and Border Protection Service.

This rule increases the mango assessment rate, by one quarter of a cent per pound, to three quarters of a cent per pound. Currently, the assessment rate is one half cent per pound of mangos handled domestically or imported into the United States. In order to sustain and expand its promotion, research, and communications programs, the Board contends that additional revenue is required. The assessment rate increase is expected to generate an additional \$1.6 million annually, depending on the volume of mangos handled in the United States or imported into the United States. In 2010, a total of 717,830,404 pounds of mangos were subject to assessment, resulting in approximately \$3.6 million in assessment revenue. Less than one percent of the total assessments were from domestic handlers as the vast majority of assessments were collected from importers. The Board states that the assessment rate increase will enable it to make additional investments in its marketing and research programs. In addition, the Board states that some of the additional revenue may be used to establish a contingency fund to ensure consistent funding for its programs.

The Board, whose members represent domestic producers, first handlers, importers, and foreign producers, voted at its September 12, 2009 meeting to increase the assessment rate by one quarter of a cent per pound after the March 2010 continuance referendum. Of the members present at the meeting, 9 voted in favor and 4 opposed proposal of the assessment rate increase. The four Board members who voted against the assessment increase stated that the increase would be passed on to mango producers. The assessment will be imposed on first handlers and

importers who pay assessments under the Order. Business decisions on how to manage assessments, including whether to pass back the cost of assessments to producers, are made by handlers and importers based on their respective business practices.

Accordingly, this action will amend the Order by changing the current assessment rate of one half cent per pound of mangos, as stated in section 1206.42(b), to three quarters of a cent per pound.

A proposed rule concerning this action was published in the Federal Register on May 10, 2011 [76 FR 26946]. Copies of the proposed rule were made available on the Internet at www.ams.usda.gov/fvpromotion and www.regulations.gov. In addition, AMS published a press release announcing the comment period. The proposed rule provided a 60-day comment period, which ended July 11, 2011. Twenty comments were received by the deadline.

Summary of Comments

Of the 20 comments received regarding the proposed rule, 17 supported and three opposed the proposed amendment.

A total of 11 commenters supported the assessment rate increase based on positive results already achieved by the Board. Their comments stated that the Board has increased mango consumption and market penetration, fostered better relations between consumers and the mango industry, and educated consumers and industry stakeholders about mangos. One commenter noted that because of the Board's efforts, more than 4,000 in-store mango tasting events have been conducted, the number of restaurants offering mango dishes has grown, more benefits stemming from mango consumption have been discovered, and the mango industry has a united consumer marketing message. Two commenters noted specific support for the Board's health research activities.

Six commenters supported the assessment rate increase as a means of ensuring the Board's programs are adequately funded. Two commenters stated that the Board's programs are essential to maintain the growth in U.S. demand for mangos. One commenter also stated that the proposed increase in assessments is needed to keep up the momentum of the Board's current promotion and research activities. One commenter noted that any additional revenue should be used primarily for promotion and research programs rather than overhead expenses.

One supportive commenter noted that all Board expenditures must be approved by the Board members, who represent the interests of different regions and countries. Because the Board is comprised of members from six countries and the Commonwealth of Puerto Rico, the ability of the Board to come to a consensus on activities and expenditures is valuable to the entire mango industry. One comment cited the geographic diversity of the Board as a key reason for its success because a wide variety of viewpoints are represented by the Board members. The fact that the assessment increase is favored by a majority of Board members demonstrates the breadth of support for the increase from throughout the mango industry.

Another commenter stated that the proposed assessment increase has been discussed with all mango industry stakeholders, and is favored by organizations in Mexico, Peru, Guatemala, Haiti, Ecuador and Brazil. In order to determine whether foreign producers would support an assessment increase, the Board held informational meetings in each of the countries that export mangos to the United States. At these meetings, Board representatives explained the activities conducted with assessment funds and received positive feedback from attendees on the proposed assessment increase.

One of the comments in support of the assessment increase was received from a Mexican mango industry organization. In addition to their own comments, several commenters submitted

correspondence from foreign agricultural organizations indicating their support for the assessment increase. Letters of support were received on behalf of organizations in Haiti, Peru, Guatemala, Ecuador, and Brazil.

One commenter opposed the assessment increase, stating that the Board can fulfill its objectives at its current funding level. As the Board stated in its proposal, without an increase in the assessment rate, spending on mango research and promotion programs would need to be reduced. As stated previously, the 2010 econometric study concluded that decreased spending on the Board's programs would correspond to declines in mango purchases.

One commenter opposed the assessment increase, stating that raising the assessment rate would harm mango importers already coping with higher freight rates and poor currency exchange rates. In response, another commenter argued that the assessment is an investment rather than an expense. This same commenter further stated that the investment in the Board would be used to improve market penetration, thereby improving returns to growers and shippers, and offsetting the higher costs. Additionally, the 2010 econometric study found that increased spending by the Board provides a large increase in revenues to importers.

One commenter opposed the assessment increase, stating that the current assessment provides a negative return on investment. Another commenter also noted that the Board should ensure that its investments are yielding reasonable returns. One commenter further stated that the assessment rate needed to sufficiently fund promotion programs would likely be 20 times the proposed rate of three quarters of a cent per pound. No evidence was offered to support this claim. According to the 2010 econometric study, every \$1 currently spent by the Board adds an additional \$7 to mango freight on board revenues.

The Department has considered all of the comments and is not making any changes to the proposed rule.

After consideration of all relevant material presented, the Board's recommendation, public comments and other information, it is hereby found that this rule, as published in the Federal Register on May 10, 2011 [76 FR 26946], is consistent with and will effectuate the purpose of the Act

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Mango promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1206 is amended as follows:

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR part 1206 continues to read as follows:

Authority: 7 U.S.C. 7411-7425 and 7 U.S.C. 7401.

2. In §1206.42, paragraph (b) is revised to read as follows:

§1206.42 Assessments.

* * * * *

(b) The assessment rate shall be $\frac{3}{4}$ of a cent per pound on all mangos. The assessment rate will be reviewed and may be modified by the Board with the approval of the Department, after the first referendum is conducted as stated in §1206.71(b). The Department will amend this section if the assessment rate is modified.

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Dated: April 6, 2012

David R. Shipman
Acting Administrator
Agricultural Marketing Service

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